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JUDGING THOMAS RUFFIN AND THE HINDSIGHT DEFENSE*

ERIC L. MULLER**

Judge Thomas Ruffin of the antebellum Supreme Court of North Carolina enjoys the reputation as one of the great judges of the nineteenth century; some rank him among the greats of all American history. This reputation has been little tarnished by his authorship of State v. Mann, an opinion that has become one of the central texts of the American law of slavery due to its savage endorsement of the right of the temporary hirer of a slave to shoot her in the back without risking criminal sanction.

Scholars have hesitated to condemn Judge Ruffin for his Mann opinion. To some extent, this is because Ruffin professed great personal anguish in that opinion at the harshness of its outcome. In addition, the archival record seemed to contain few clues (beyond the Mann opinion itself) about Ruffin's attitudes toward slavery and his own slaves. Finally, and relatedly, scholars have wished to honor what the Article calls the "hindsight defense" of historical actors—the claim that present observers cannot fairly assess the behavior of figures from the past because they will inevitably ignore the culture and morals of that earlier time.

This Article presents newly discovered archival evidence that places Judge Ruffin and his Mann opinion in a much more troublesome light. The evidence reveals Ruffin to have been a batterer of slaves, a speculating slave trader at a time when that trade had become disreputable, and a serial breaker of slave families. These new disclosures not only force a reconsideration

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** Dan K. Moore Distinguished Professor in Jurisprudence and Ethics, University of North Carolina School of Law. I owe thanks to my friend Sally Greene for helping me see how Thomas Ruffin's life and legacy relate to the themes of historical memory and responsibility that so interest me—and for giving me great comments on an early draft of this paper. I also owe thanks to the staff of the Manuscripts Department of the Louis Round Wilson Library at the University of North Carolina at Chapel Hill, particularly Matthew Turi, Aidan Smith, Nathaniel King, and Timothy Williams. John Orth, Adrienne Davis, Al Brophy, and Leslie Branden-Muller read drafts of the paper and offered helpful feedback.

I dedicate this Article to the memory of Bridget, Dick, Noah, and November.

of Judge Ruffin and his Mann opinion, but also suggest that the "hindsight defense" of historical actors is often excessively simplistic and reductionist.

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INTRODUCTION

When Thomas Ruffin died at the age of eighty-three on January 15, 1870, the obituarists outdid themselves. "[A]s a jurist and Chief Justice of North Carolina," said the Raleigh *Sentinel*, Ruffin's "fame ha[d] gone abroad in the land, across the great waters;" with his death, "the whole state and humanity itself" had "lost something . . . of the dignity and prestige of the Judiciary."¹ "In all the history of North Carolina there has not lived or died a better man,"² opined the *North Carolina Standard*. "He is not only a loss to his family and friends but to the whole country," said Ruffin's hometown newspaper, the Hillsborough *Recorder*, which also expressed the hope that the "example of his life" and "the truth of his opinions" would "prove a voice, speaking from the tomb for the good of his country and the happiness of mankind."³

Nevermind that the "example of [Ruffin's] life" included not just owning human beings but trafficking in them, battering somebody else's slave for giving him a look that he did not like, and repeatedly

1. Obituary, *Thomas Ruffin*, THE SENTINEL (Raleigh, N.C.), Jan. 19, 1870, at 4, reprinted in 4 THE PAPERS OF THOMAS RUFFIN 229, 230 (J.G. de Roulhac Hamilton ed., 1920).

2. Obituary, *Thomas Ruffin*, THE NORTH CAROLINA STANDARD, Jan. 18, 1870, at 2.

3. *The Death of Judge Ruffin*, THE HILLSBOROUGH RECORDER, Jan. 26, 1870, at 3.

separating husbands from wives and parents from children.⁴ Nevermind that the opinions whose truth the obituaries praised included Ruffin's opinion in *State v. Mann*,⁵ which went out of its way to bolster a slave owner's "uncontrolled authority over the body" of his slave,⁶ and *Cannon v. Jenkins*,⁷ which volunteered, in dictum, that an estate executor ought to break up a slave family if separate sales would bring a higher price.⁸ These facets of Ruffin's life did not matter to his contemporaries—or at least those who wrote his eulogies.

Neither, apparently, did they matter to those who commissioned a statue of Ruffin in 1915 and placed it at the entrance to the Court of Appeals of North Carolina,⁹ or to those at the University of North Carolina at Chapel Hill who named a new dormitory to honor him in 1922.¹⁰ Nor did they seem to matter to Harvard Law School Dean Roscoe Pound, who, as late as 1936, identified Thomas Ruffin as one of the "great judges of the formative era of our law."¹¹

Only in recent years has Ruffin's authorship of *State v. Mann* come to diminish his reputation. But scholars have trodden tentatively. Its title notwithstanding, Sally Hadden's important essay *Judging Slavery: Thomas Ruffin and State v. Mann*¹² offers little in the way of judgment. Hadden did valuable work in Ruffin's archived writings, work that revealed Ruffin as a sterner, more cold-hearted person and slave owner than scholars had thought.¹³ Hadden nonetheless accepted Ruffin's claim that he truly "lamented" the brutality of slavery and concluded that Ruffin "understood slavery's

4. See *infra* Part V.

5. 13 N.C. (2 Dev.) 263 (1829).

6. *Id.* at 266.

7. 16 N.C. (1 Dev. Eq.) 422 (1830).

8. *Id.* at 426.

9. See Sally Greene, *Judge Thomas Ruffin and the Shadows of Southern History*, in *COMMEMORATION AND THE AMERICAN CITY: ESSAYS ON MONUMENTS, MEMORIALIZATION, AND MEANING* (David Gobel & Daves Rossell eds., forthcoming 2009).

10. University of North Carolina at Chapel Hill, Carolina Story—Names Across the Landscape: Thomas Ruffin, <http://museum.unc.edu/exhibits/names/thomas-ruffin-1787-1870-and-ruffin-residence-hall> (last visited Feb. 27, 2009).

11. See ROSCOE POUND, *THE FORMATIVE ERA OF AMERICAN LAW* 84 (1938). Pound delivered his opinion of Ruffin in a lecture in 1936; that lecture was published in 1938. *Id.* at vi–vii.

12. Sally Hadden, *Judging Slavery: Thomas Ruffin and State v. Mann*, in *LOCAL MATTERS: RACE, CRIME, AND JUSTICE IN THE NINETEENTH-CENTURY SOUTH* 1–28 (Christopher Waldrep & Donald C. Nieman eds., 2001).

13. See *id.* at 6–11.

basic immorality.”¹⁴ Similarly, in his seminal work *Slave Law in the American South*, Mark Tushnet accepted Ruffin’s professions of anguish at the outcome of *State v. Mann* as demonstrations of “candor” and Southern “honor.”¹⁵ Only Sanford Levinson has explicitly called the question of out-and-out *judging* Thomas Ruffin for his authorship of *State v. Mann*.¹⁶ And he did not answer the question he called.¹⁷

There is a reason for this reluctance to judge Thomas Ruffin that goes beyond the sense among historians that it is not their professional role to assign blame to figures from the past.¹⁸ That reason is what might be termed the “hindsight defense” of historical figures. Writing fourteen years ago, Sanford Levinson put the point clearly: “It is, of course, a cheap thrill to denounce Ruffin . . . from the safety of a 1995 perspective.”¹⁹ The hindsight defense posits that we cannot fairly or accurately judge historical figures because we inevitably do so by reference to the morality and customs of our own day rather than the morality and customs of theirs. It is a common, almost instinctive, objection that gets voiced whenever someone calls attention to the darker sides of our American heroes. It was, for example, Wyoming Senator Malcolm Wallop’s reaction when Congress considered an apology and reparations payments for Franklin Roosevelt’s wartime incarceration of Japanese Americans: “[T]o superimpose the peacetime mentality of today on the past and to judge our predecessors on that account is . . . ‘[t]he hindsight wisdom of a Monday morning quarterback.’ ”²⁰

In this Article, I will argue against the hindsight objection, both as a general proposition and specifically in the case of Thomas Ruffin. First, as a general matter, the hindsight objection rests on a simplistic idea of what any particular moment actually represents in the course of a society’s history. The hindsight objection conceives of historical moments as monoliths—times in which “people” believed or thought a particular thing or acted in a particular way. Yet on most matters of

14. *Id.* at 18.

15. MARK TUSHNET, *SLAVE LAW IN THE AMERICAN SOUTH: STATE V. MANN IN HISTORY AND LITERATURE* 93–96 (2003).

16. See Sanford Levinson, *Allocating Honor and Acting Honorably: Some Reflections Provoked by the Cardozo Conference on Slavery*, 17 *CARDOZO L. REV.* 1969, 1969 (1996).

17. See *id.* at 1969, 1980.

18. See TREVOR BURNARD, *MASTERY, TYRANNY & DESIRE: THOMAS THISTLEWOOD AND HIS SLAVES IN THE ANGLO-JAMAICAN WORLD* 31 (2004) (“As historians, it is not our responsibility to attribute retrospective blame.”).

19. Levinson, *supra* note 16, at 1975.

20. 134 *CONG. REC.* 7608, 7615 (1988) (statement of Sen. Wallop).

later consequence, this is often verifiably false; careful examination of history often reveals considerable diversity of opinion and practice and the possibility of meaningful, and morally consequential, choice.

Second, whatever the abstract merits of the hindsight objection, Thomas Ruffin is in a uniquely poor position to avail himself of it. In drafting his opinion in *State v. Mann*, Ruffin turned his gaze directly to readers who were outside what he understood as his own framework. *State v. Mann* was exquisitely aware of the certainty of judgment by outsiders; Ruffin expected that judgment and crafted an opinion that would respond to and defend against it. And even more to the point, Ruffin enlisted the passage of time as a rhetorical and substantive weapon in *State v. Mann*: the opinion depended on Ruffin's confident prediction that a future generation would see the rightness of his judgment. Having invoked the passage of time as his sword in *State v. Mann*, Ruffin should not be heard to raise it as a shield.

And third, even if we entertain a hindsight objection tendered on Ruffin's behalf, that objection is invalid on its merits. The archives contain a good deal more evidence about Thomas Ruffin's views and practices concerning slaves and slavery than scholars have heretofore uncovered. This new material reveals that Ruffin's personal "lamentations" about the harsh outcome of *State v. Mann* likelier reflected posturing than honest confession. The full archival record shows that Thomas Ruffin was not among the better men of his time and place on matters relating to slavery and that he may have been among the worst.

I. *STATE V. MANN* AND THE CURIOUSLY STURDY REPUTATION OF THOMAS RUFFIN

Thomas Ruffin is seen differently today from how he was seen at the time his obituaries appeared in North Carolina newspapers. To his contemporaries, or at least those of his race and class, Ruffin was a figure of towering accomplishment, and his memory retained that aura for at least seven decades.²¹ Today, he is a figure of discomfort. Scholars struggle to reconcile his many accomplishments with his authorship of *State v. Mann*, perhaps the coldest and starkest defense of the physical violence inherent in slavery that ever appeared in an

21. The glowing evaluation of Ruffin by Dean Roscoe Pound, cited in *supra* note 11, came in 1936, nearly seventy years after Ruffin's death. See TUSHNET, *supra* note 15, at 74.

American judicial opinion.²² To say the least, *State v. Mann* has complicated the narrative of an American legal hero.

Notably, though, *State v. Mann* has not come close to destroying that narrative. Ruffin remains a celebrated figure. His imposing statue still greets every visitor to the Court of Appeals of North Carolina. Each year, ninety-five students at the University of North Carolina at Chapel Hill live in a dormitory that bears his name. The local chapter of the international legal fraternity Phi Alpha Delta at the university is the Ruffin Chapter. While Ruffin's portrait does not hang on the walls of the university's law school, it does adorn the chamber of the campus's Dialectic Society.

Ironically, part of the durability of Ruffin's reputation comes from the very thing that most tarnishes it: the opinion in *State v. Mann*. Others have analyzed the *Mann* opinion with great sophistication,²³ so only the briefest of summaries is needed here.²⁴ John Mann leased the slave Lydia from her owner for the year 1828.²⁵ When she committed what the reported opinion calls "some small offense," Mann began to "chastise" her.²⁶ Lydia ran off during the punishment.²⁷ Mann shot her in the back as she ran, wounding but not killing her.²⁸ It was already settled North Carolina law that a stranger to a slave—that is, a person not the slave's owner—could be indicted for the crime of battery in a situation of this sort.²⁹ On the other hand, as Sally Hadden reports, "[l]ocal officials rarely intervened when an owner struck or shot a slave."³⁰ John Mann was neither a stranger to Lydia nor was he her true owner; he was a leaseholder. *State v. Mann* therefore appeared to present the legal

22. The scholarly conference that spawned the articles published in this symposium, "The Perils of Public Memory: *State v. Mann* and Thomas Ruffin in History and Memory," held at the University of North Carolina at Chapel Hill on November 16, 2007, testifies to the difficulty of squaring Ruffin's celebrated memory with his authorship of *Mann*.

23. The most noteworthy analysis is undoubtedly Mark Tushnet's. See TUSHNET, *supra* note 15, at 20–37.

24. The facts I relate come from The Supreme Court of North Carolina's opinion. However, Sally Greene's contribution to this symposium, *State v. Mann Exhumed*, 87 N.C. L. REV. 701, 707–27 (2009), presents new archival evidence that significantly expands our understanding of the case.

25. *State v. Mann*, 13 N.C. (2 Dev.) 263, 263 (1829).

26. *Id.*

27. *Id.*

28. *Id.*

29. See *State v. Hale*, 9 N.C. (2 Hawks) 582, 584 (1823) (finding there is "as much reason" for making a stranger's battery of a slave indictable "as if a white man had been the victim").

30. Hadden, *supra* note 12, at 9.

question of whether, under the common law, the leaseholder of a slave could be indicted for the crime of battery.

Judge Ruffin did not cast the question so narrowly, however; he did not choose to draw what might seem an inviting distinction between a person who owned a slave and a person who merely leased a slave. He reported instead that the law “uniformly” treated “the hirer and possessor of a slave” as, “for the time being, the owner” for the purposes of both “rights and duties.”³¹ As Judge Ruffin shaped it, the case therefore presented the question of whether a slave owner—temporary *or* permanent—could be indicted for the common-law crime of battery for using excessive physical force against his slave.³²

Judge Ruffin held that he could not. Slaves could be compelled to a lifetime of work only if they lacked independent will, and the only way to strip them of that will was to confer on the slave’s owner an “uncontrolled authority over [her] body.”³³ As Ruffin memorably put it, “[t]he power of the master must be absolute to render the submission of the slave perfect.”³⁴ And that power insulated the owner from criminal responsibility even for “instances of cruelty and deliberate barbarity.”³⁵ The legislature might, if it wished, “interpose express enactments to the contrary;” that is, it might pass a statute clearly extending the scope of the crime of battery to cover a slave owner.³⁶ But a court—that is to say, Judge Thomas Ruffin—could not do so through a judicial opinion.

This was a cold outcome, to be sure: a man shoots a woman in the back, and a judge refuses to hold him accountable. But Judge Ruffin protected himself from judgment by studding the opinion with confessions of his personal distaste for the outcome and of the distress that the case had brought him. The confessional tone began with Judge Ruffin’s very first line: “A Judge cannot but lament when such cases as the present are brought into judgment.”³⁷ And it continued all the way through to the opinion’s final paragraph, in which Judge Ruffin reported that he “would gladly have avoided th[e] ungrateful question” that the case presented.³⁸ In between this opening and this closing, Judge Ruffin repeatedly bared what he

31. *Mann*, 13 N.C. (2 Dev.) at 265.

32. *See id.* at 264–65.

33. *Id.* at 266.

34. *Id.*

35. *Id.* at 267.

36. *See id.* at 268.

37. *Id.* at 264.

38. *Id.* at 268.

reported to be his anguish. He wrote that the case opened a “severe” “struggle” in his “own breast” between his “feelings [as a] man” and his “duti[es as a] Magistrate.”³⁹ And he “most freely confess[ed his] sense of the harshness of th[e] proposition” that he used the case to establish.⁴⁰ “I feel it as deeply as any man can,” Judge Ruffin wrote.⁴¹ But all of this personal distress was beside the point. With “reluctance,” Ruffin claimed, he was “compelled to express an opinion upon the extent of the dominion of the master over the slave in North Carolina.”⁴²

Judge Ruffin’s tone of self-disclosure appears to have succeeded in blunting personal criticism in his own day. Harriet Beecher Stowe, no friend of slavery or its defenders, was quite taken with Ruffin’s profession of anguish. In *The Key to Uncle Tom’s Cabin*, Stowe wrote of *State v. Mann* and its author that one could not “read th[e] decision, so fine and clear in expression, so dignified and solemn in its earnestness, and so dreadful in its results, without feeling at once respect for the man and horror for the system.”⁴³ “[J]udging [Ruffin] from the short specimen” of the opinion in *State v. Mann*, Stowe concluded that he had “one of that high order of minds which looks straight through all verbiage and sophistry to the heart of every subject which it encounters.”⁴⁴ Stowe accepted Ruffin’s claim that the law left him with no choice but the outcome that so pained him: he was a man of “honor,” of “humanity,” and of “the kindest and gentlest feeling” who was “obliged to interpret these severe laws with inflexible severity.”⁴⁵

Francis Nash, a prominent North Carolina lawyer of the generation that followed Ruffin’s, proved himself equally unfazed by *State v. Mann* in his biography of Ruffin that appeared in the *Charlotte Observer* in 1905.⁴⁶ “As a judge,” wrote Nash, Ruffin’s “excellence was supreme”—on par with that of Chief Justice John

39. *Id.* at 264.

40. *Id.* at 266.

41. *Id.*

42. *Id.* at 264.

43. HARRIET BEECHER STOWE, *THE KEY TO UNCLE TOM’S CABIN* 147 (1853) [hereinafter *STOWE, THE KEY TO UNCLE TOM’S CABIN*]; see also 1 HARRIET BEECHER STOWE, *SUNNY MEMORIES OF FOREIGN LANDS* 261 (1854) (“It always seemed to me that there was a certain severe strength and grandeur about [the opinion in *State v. Mann*] which approached to the heroic.”).

44. STOWE, *THE KEY TO UNCLE TOM’S CABIN*, *supra* note 43, at 147–48.

45. *Id.* at 133.

46. Francis Nash, *Chief Justice Thomas Ruffin*, in 1 *THE PAPERS OF THOMAS RUFFIN* 35, 39 (J.G. de Roulhac Hamilton ed., 1918).

Marshall.⁴⁷ His opinions were notable for “their breadth of view, fullness of discussion, the battle-axe force of their reasoning, the strength of their language, and the almost inevitable character of their conclusions.”⁴⁸ In support of this characterization, Nash cited Ruffin’s opinion in *State v. Boyce*,⁴⁹ in which the court held that a slave owner could not be charged with the crime of maintaining a disorderly house for allowing his slaves to dance and sing on Christmas Eve.⁵⁰ In his essay, Nash included—but was apparently not troubled by—Ruffin’s comment that these “noisy outpourings of glad hearts” were God’s blessing on slaves, creatures with “corporeal vigor” but “vacant mind[s].”⁵¹ Nash did not, however, cite *State v. Mann* as evidence of Ruffin’s “battle-axe” logic and “inevitable” conclusions. In fact, he did not mention *Mann* at all.

Neither did Harvard Law School Dean Roscoe Pound mention *Mann* in 1936, when he listed Thomas Ruffin as one of the great common-law judges in United States history.⁵² In Pound’s eyes, *Mann* presumably did not detract from Ruffin’s excellence in regularly satisfying what Pound identified as the three criteria of great judging: “reasoned application of the law the judges receive from a tradition; responsiveness to the need to adapt the law to new circumstances; and attention to the role of judicial decisions as precedent.”⁵³

Historian Julius Yanuck did include *State v. Mann* in his important 1955 article “Thomas Ruffin and North Carolina Slave Law,” but *Mann* did not detract from the author’s assessment of Ruffin’s Chief Judgeship as a time of amelioration in the slave law of the state.⁵⁴ Ruffin’s position in *Mann* was harsh, Yanuck conceded,⁵⁵ but several things tempered it: Ruffin’s “deep aversion”⁵⁶ to its

47. *Id.*

48. *Id.*

49. 32 N.C. (10 Ired.) 536 (1849).

50. *Id.* at 541.

51. *Id.*

52. See POUND, *supra* note 11, at 4.

53. TUSHNET, *supra* note 15, at 74–75. Martin H. Brinkley’s “brief history” of the Supreme Court of North Carolina that appears on the court system’s website echoes this assessment, saying nothing at all about *State v. Mann* or Ruffin’s contributions to the law of slavery. See Martin H. Brinkley, *Supreme Court of North Carolina: A Brief History*, <http://www.aoc.state.nc.us/www/copyright/sc/facts.html> (last visited Feb. 27, 2009).

54. Julius Yanuck, *Thomas Ruffin and North Carolina Slave Law*, 21 J. S. HIST. 456, 475 (1955).

55. *Id.* at 462.

56. *Id.*

“unpleasant”⁵⁷ outcome, the “sincere personal distaste”⁵⁸ that Ruffin felt for the result that logic commanded, and especially the fact that Ruffin was “himself the most moral of men”⁵⁹ who was “humane toward his slaves.”⁶⁰ *Mann* permitted needless violence against slaves under the guise of “correction,” but Yanuck, who found in Ruffin’s papers “no ill-treatment of slaves,”⁶¹ was confident—erroneously, as will soon become clear—that “it was . . . unthinkable that Ruffin and the many planters of his status in society would ordinarily avail themselves of the full latitude permitted them in correcting their slaves.”⁶²

And as noted earlier, even the leading recent work on Ruffin, while offering a more clear-eyed view of *Mann*’s place in Ruffin’s career, has taken Ruffin’s professions of anguish more or less at face value. Sally Hadden reported herself “skeptical” that Thomas Ruffin’s professed “paternalism” toward slaves was “sincere” or “more than skin-deep”⁶³ but nonetheless accepted that Ruffin “lament[ed] the brutality of slavery” and “understood slavery’s basic immorality.”⁶⁴ Mark Tushnet, too, accepted that Ruffin “believed that absolute dominion [of master over slave] was indeed morally repugnant”⁶⁵ and that Ruffin’s “statements of regret” in *State v. Mann* came from the judge’s firm commitment to “developing a sound rule of law” notwithstanding the presence in the case of contrary “circumstances” that he would have found “appealing.”⁶⁶

The subject matter of *State v. Mann* was obviously volatile. The care with which Thomas Ruffin honed the language of the opinion through three complete drafts reflects his awareness of the opinion’s sensitivity.⁶⁷ By lacing the opinion with confessions of personal anguish and moral discomfort, Ruffin built a firewall against our judgment. That firewall has weakened over 180 years, but it has not crumbled.

57. *Id.* at 463.

58. *Id.*

59. *Id.* at 466.

60. *Id.* at 474.

61. *Id.* at 475.

62. *Id.* at 473–74.

63. Hadden, *supra* note 12, at 8.

64. *Id.* at 18.

65. TUSHNET, *supra* note 15, at 63.

66. *Id.* at 84.

67. The three drafts appear in 4 THE PAPERS OF THOMAS RUFFIN, *supra* note 1, at 249–57.

II. *STATE V. MANN* AND THE HINDSIGHT DEFENSE

Confessed anguish is not the only thing that has kept *State v. Mann* from swamping Thomas Ruffin's reputation. So too has the passage of time. Slavery ended a few decades after Ruffin wrote his opinion; the culture that sustained the institution withered after slavery's demise. In the United States today, slavery is outlawed, its culture foreign and unfamiliar.

We are therefore doubly reluctant to judge Judge Ruffin for his authorship of *State v. Mann*: not only did he confess to us his personal discomfort over the harshness of the decision, but he lived in an earlier world so different from our own that we fear we cannot judge him fairly. We have the benefit of hindsight, something that Thomas Ruffin of necessity lacked. Thus, as we consider the case of Thomas Ruffin, he stands before us with a well-pled "hindsight defense."

An especially eloquent articulation of the hindsight defense of historical figures is that of the nineteenth-century British politician and historian Thomas Babington Macaulay. In 1835, Macaulay published a review of an edited publication of Sir James Mackintosh's *History of the Revolution in England*.⁶⁸ Macaulay's review praised Mackintosh but faulted the volume's unnamed editor for "the contempt with which [he thought] fit to speak of all things that were done before the coming in of the very last fashions in politics."⁶⁹ This error, Macaulay wrote, was "as pernicious as almost any error concerning the transactions of a past age can possibly be."⁷⁰ To "form a correct estimate" of the "merits" of a prior generation, Macaulay argued that "we ought to place ourselves in their situation, to put out of our minds, for a time, all that knowledge which they, however eager in the pursuit of truth, could not have, and which we, however negligent we may have been, could not help having."⁷¹ "Undoubtedly," Macaulay conceded, "it is among the first duties of a historian to point out the faults of the eminent men of former generations."⁷² But as a matter of fairness, historians owe it to those eminent men to strip away hindsight and see the world as their

68. THOMAS BABINGTON MACAULAY, *Sir James Mackintosh*, in II CRITICAL AND HISTORICAL ESSAYS BY LORD MACAULAY 283 (1901).

69. *Id.* at 300.

70. *Id.*

71. *Id.* at 302.

72. *Id.* at 305–06.

subjects saw it. "As we would have our descendants judge us," Macaulay memorably argued, "so ought we to judge our fathers."⁷³

Thomas Ruffin cited his supposedly anguished feelings to stave off judgment for the harshness of the outcome in *State v. Mann*. Yet we can also read Ruffin's *Mann* opinion as subtly invoking the hindsight defense in its first few sentences:

A Judge cannot but lament, when such cases as the present are brought into judgment. It is impossible that the reasons on which they go can be appreciated, but where institutions similar to our own exist and are thoroughly understood. The struggle, too, in the Judge's own breast between the feelings of the man, and the duty of the magistrate is a severe one, presenting strong temptation to put aside such questions, if it be possible.⁷⁴

It is often assumed that what Thomas Ruffin chiefly "lamented" was the pathos of the case—the "distasteful" nature of the assault on Lydia and the chasm that the case opened up "between 'the Judge' and 'the man.'"⁷⁵ But that is not precisely what Ruffin said. What Ruffin actually said he "lamented" was the inevitability of judgment—the certainty that his opinion (and, by extension, its author) would be *misunderstood* and *condemned* by people unfamiliar with its context. Ruffin lamented *his own* position, not Lydia's. The emotional struggle between feeling and duty was also severe, but Ruffin's insertion of the word "too" makes plain that this struggle was a distinct difficulty from the one that he chiefly "lamented."

Mark Tushnet is undoubtedly right that Ruffin was primarily glancing northward when he predicted that his reasons would not be "appreciated" in places where "institutions similar to [his] own" did not exist.⁷⁶ But the sentence also might be a glance toward the *future*—toward a reader of a later day such as ours, in which "institutions similar to [his day's] own" no longer "exist" and are no

73. *Id.* at 302. For an articulation of the hindsight defense, see Kim Forde-Mazrui, *Taking Conservatives Seriously: A Moral Justification for Affirmative Action and Reparations*, 92 CAL. L. REV. 683, 711 (2004) ("During the period in which state and federal laws sanctioned slavery and discrimination, a majority of Americans presumably believed these practices were not immoral, at least not intolerably so. To hold now, in hindsight, that society committed immoral acts would impose on society an obligation based on conduct that has only become widely accepted as immoral after its occurrence. It is arguably unfair to blame society based on moral standards not yet established at the time of the purported wrongdoing.").

74. *State v. Mann*, 13 N.C. (2 Dev.) 263, 264 (1829) (emphasis added).

75. TUSHNET, *supra* note 15, at 26.

76. *See id.* at 26–27.

longer “thoroughly understood.” In a closely related passage of *State v. Mann*, Ruffin “most freely confess[ed] [his] sense of the harshness of the proposition” the opinion established; intriguingly, he said that as a moral proposition, it was one that “every person *in his retirement* must repudiate.”⁷⁷ In the language of his time, the verb “retire” had a double sense: it meant “to withdraw into seclusion,” but it also had the temporal connotation we think of today—a withdrawal from an office or business toward life’s end to enjoy greater leisure.⁷⁸ Thus, in the word “retirement,” we can perhaps sense a touch of anxiety in Ruffin about how his judgment would look not just to observers from a different place, but to observers from a later time.

The hindsight defense has worked well for Thomas Ruffin. Even Sanford Levinson, a scholar so horrified by *Mann* as to ask whether Ruffin’s portrait deserves to hang in honor on the walls of an American law school, gave the hindsight defense its due. “[T]o denounce Ruffin . . . from the safety of a 1995 perspective,” Levinson argued in that year, was but a “cheap thrill.”⁷⁹ In the balance of this Article, I will argue that there is nothing “cheap” in denouncing Ruffin from the safety of the present. Not only are the merits of the hindsight defense overstated as a general matter, but Thomas Ruffin arrives in today’s world poorly positioned to assert it.

III. THE DANGEROUS GENERALITY OF THE HINDSIGHT DEFENSE

“The past is a foreign country: they do things differently there.”⁸⁰ This is the first sentence of L.P. Hartley’s 1953 novel *The Go-Between*, but we might also take it as a statement of the central idea of the hindsight defense. The hindsight defense depends on the notion that a historical figure lived not just in a different moment from our own but in a wholly different moral *context*—a moment of culture, belief, and practice so different from the present as to make judgment perilous if not impossible. Insofar as the hindsight defense reminds us that the past differs from the present, it has some value.

On the other hand, insofar as the hindsight defense subtly suggests that the past was a monolith, it is usually false and misleading. To put the point in L.P. Hartley’s language, we must remember that the foreign country of the past is in fact *a whole country*: a big place where different people thought about and did

77. *Mann*, 13 N.C. (2 Dev.) at 266 (emphasis added).

78. See XIII OXFORD ENGLISH DICTIONARY 782 (1989).

79. Levinson, *supra* note 16, at 1975.

80. L.P. HARTLEY, *THE GO-BETWEEN* 9 (1953).

many things in different and conflicting ways. In debates about the contested beliefs and practices of some segment of the population of a particular historical era, the hindsight defense, therefore, offers us very little and needlessly deters us from judgment. Careful consideration of the merits and demerits of a historical figure should press beyond the hindsight defense to focus on the choices that the historical figure made from within the broad range of views, beliefs, and behaviors of his day.

A personal anecdote might help illustrate the way the hindsight defense tends to depict the past. When I was in high school, I read something about the devastation wrought at Hiroshima and Nagasaki by our two atomic bombs. In a conversation that evening with my grandmother, who parented my mother alone during the war while my grandfather served in the U.S. Navy, I expressed a teenager's outrage that my country could have inflicted so much suffering on so many innocent civilians. My grandmother flashed with impatience. "You don't understand," she said, "and you don't know what it was like. Times were different then. People were scared and had made a lot of sacrifices. People thought the bombs were necessary. There was no other way to win the war."⁸¹

I would imagine that many people have had similar exchanges with parents or grandparents upon learning of some arguable blemish on the memory of an earlier generation. The broad assertion that "times were different" is an understandable response to defend the memory and reputation of that earlier generation. It appears everywhere—not just in private family discourse. It is, for example, the view that Alan Simpson voiced on the floor of the United States Senate two decades ago during the debate over an apology for the Japanese American internment. "[A]t that time," said Simpson, "in most every structure of our citizenry, or [sic] Government and our bureaucracy, [internment] seemed the very right thing to do."⁸²

The trouble with this understandable sort of response is that it is often demonstrably oversimplified. Consider Alan Simpson's recollection that internment seemed "right" in "most every structure of our citizenry, [our] Government, and our bureaucracy."⁸³ This is false. The government's policy of excluding Japanese Americans

81. I mention this anecdote not to join issue on the debate over whether the United States was justified in dropping either or both of those two atomic bombs, but to illustrate a common claim about the monolithic and unanimous nature of past judgments and events.

82. 134 CONG. REC. 7608, 7615 (1988) (statement of Sen. Simpson).

83. *Id.*

from the West Coast and detaining them *en masse* did *not* seem the right thing to do to the Attorney General of the United States, the Director of the FBI, a third of the Justices of the Supreme Court of the United States, many respected public intellectuals, and many newspaper editorialists of the time.⁸⁴ The truth is that among those paying attention to the issues, support for exclusion and internment was not the monolith that Senator Simpson recalled.⁸⁵ These policies were choices that government officials made from among an array of options debated at the highest and most central levels of government and public opinion.

The point emerges even more clearly if we think about our own society and how the true range and nuance of our views might be characterized by the generations that will follow us. Suppose that many decades from now an American politician, speaking of the U.S. detention facility at Guantanamo Bay, urges the Americans of his day to remember that the Americans of our day were frightened by the attacks of September 11, 2001, and therefore thought Guantanamo necessary to combat terrorism. The politician might point to the overwhelming support that the President received for the military effort against al Qaeda and the Taliban in the Authorization to Use Military Force of September 18, 2001,⁸⁶ and infer in his own mind that Guantanamo was one of a package of measures against terrorism that “the American people” wanted and supported. But do you find this an accurate characterization of the true range of American thought and feeling on Guantanamo, in particular, or on the appropriate balance between civil liberties and national security more generally? This thought experiment about how future generations will be tempted to reduce ours to a monolith helps us see more clearly how the hindsight defense tempts us to a monolithic and falsely simplistic understanding of the past.

Thomas Ruffin’s opinion in *State v. Mann* is just as powerful an illustration of the uselessness of the hindsight defense in a careful judgment of a historical figure. While a defender of Ruffin might claim that his reasoning in *State v. Mann* was a simple product of its time and culture rather than a contestable choice, nearly everything

84. See Eric L. Muller, *Fixing a Hole: How the Criminal Law Can Bolster Reparations Theory*, 47 B.C. L. REV. 659, 695–701 (2006).

85. It is worth noting that Senator Simpson was a boy of ten when the exclusion and internment of Japanese Americans commenced and can, for that reason, be excused for misperceiving the unanimity of support for the program.

86. Authorization for Use of Military Force, S.J. Res. 23, 107th Cong., 115 Stat. 224 (2001).

about the case points the other way. First, we must remember that the case reached the Supreme Court of North Carolina on appeal from a judgment of conviction rendered by a trial court after a jury trial in Chowan County, North Carolina. This means that a district attorney in Chowan County thought that John Mann's shooting of Lydia was an indictable offense.⁸⁷ It also means that a Chowan County jury of white men, many of them slave owners,⁸⁸ saw fit to convict Mann of assault and battery for his violence against Lydia. If the views of the district attorney and a unanimous Chowan County jury are any indication of the *zeitgeist*, they would tend to show that Thomas Ruffin's opinion missed it rather than reflected it. Ruffin himself contended otherwise in *Mann*; he maintained that his ruling was consistent with "the established habits and uniform practice of the country," which indicated that absolute power of a slave owner over a slave, even to the point of willful battery, was "requisite to the preservation of the master's dominion."⁸⁹ The history of the *Mann* litigation itself suggests otherwise.

Ruffin went to great lengths in the *Mann* opinion to present its outcome as foreordained. Because no statute explicitly criminalized a slave owner's battery of his slave, Ruffin concluded that a court was "forbidden" from recognizing that violent act as a common-law crime through "a train of general reasoning on the subject."⁹⁰ Ruffin described himself as "*compelled*" to hold that,

while slavery exists amongst us in its present state, or until it shall seem fit to the legislature to interpose express enactments to the contrary, it will be the *imperative duty* of the Judges to recognize the full dominion of the owner over the slave, except where the exercise of it is forbidden by statute.⁹¹

Here too, however, Ruffin had more options than he admitted. Just six years before *Mann*, the Supreme Court of North Carolina held in *State v. Hale* that a man who was not the owner of a slave *could* be indicted for battering that slave, *even though no North Carolina statute specifically criminalized battery of a slave by a non-owner*.⁹² Chief Judge Taylor's approach was nearly the opposite of Ruffin's in *Mann*: "As there is no positive law decisive of the

87. See Hadden, *supra* note 12, at 8–9.

88. See Greene, *supra* note 24, at 722–27; TUSHNET, *supra* note 15, at 70.

89. *State v. Mann*, 13 N.C. (2 Dev.) 263, 265 (1829).

90. *Id.* at 267.

91. *Id.* at 268 (emphasis added).

92. *State v. Hale*, 9 N.C. (2 Hawks) 325, 325 (1823).

question” before the court, Taylor reasoned, “a solution of it must be deduced from general principles, from reasonings founded on the common law, adapted to the existing condition and circumstances of our society, and indicating that result, which is best adapted to general expedience.”⁹³ This is precisely what Ruffin said a court was “forbidden” from doing six years later in deciding whether the lessee of a slave could be indicted for battery. *State v. Hale* certainly left Ruffin the flexibility to reach a different result in *State v. Mann*, had he wished to do so. The *Hale* decision undercuts any claim that *Mann* was just a product of its time and culture.⁹⁴

So does the dissenting opinion in the Virginia case of *Commonwealth v. Turner*,⁹⁵ a prosecution of a slave owner for maliciously assaulting and battering his own slave.⁹⁶ The General Court of Virginia held that a slave owner could not be indicted at common law for maliciously and excessively beating his own slave. However, Judge William Brockenbrough filed a dissenting opinion in which he contended that the owner of a slave *could* be indicted for that common-law crime.⁹⁷ Brockenbrough explicitly rejected the claim—made by Ruffin in *State v. Mann* just two years later—that only the legislature, and not common-law judges, could extend the criminal prohibition of battery to slave owners. Common-law judges in England could treat an attempt to commit any felony as a misdemeanor, Brockenbrough noted, and judges in Massachusetts could use the common law to allow an indictment for poisoning a cow.⁹⁸ Surely, then, “an [i]ndictment might be sustained in Virginia

93. *Id.* at 325–26.

94. The 1824 opinion of the Supreme Court of Virginia in *Commonwealth v. Booth*, 4 Va. (2 Va. Cas.) 394 (1824), also undercuts the idea that *State v. Mann* merely reflected the culture of its time. The facts of *Booth* paralleled those of *Mann*: a jury in Petersburg, Virginia, convicted a man of assault for excessively beating a slave whom he had leased for a month. *See id.* at 194. The Supreme Court of Virginia overturned the conviction because the language of the indictment was legally insufficient in failing to allege the excessiveness of the lessee’s punishment of the slave. *See id.* at 395. But the court was careful to reserve judgment on the “grave and serious as well as delicate” question of whether a lessee’s temporary ownership of a slave conferred the authority to inflict an excessive beating. *See id.* at 396. I thank Sally Greene for bringing the *Booth* case to my attention.

95. 26 Va. (5 Rand.) 678 (1827) (Brockenbrough, J., dissenting).

96. For a useful discussion of the *Turner* case, see ANDREW FEDE, *PEOPLE WITHOUT RIGHTS: AN INTERPRETATION OF THE FUNDAMENTALS OF THE LAW OF SLAVERY IN THE U.S. SOUTH* 107–09 (1992); and THOMAS D. MORRIS, *SOUTHERN SLAVERY AND THE LAW, 1619–1860*, at 188–89 (1996).

97. *Turner*, 26 Va. (5 Rand.) at 686–90 (Brockenbrough, J., dissenting).

98. *Id.* at 686–89.

for maliciously and inhumanly beating a slave almost to death.”⁹⁹ This is not to say that Brockenbrough’s position was the law in Virginia on the question; it was just a dissenting opinion. But Brockenbrough’s dissent does show that Thomas Ruffin’s contrary position in *State v. Mann* was not foreordained by the culture of the day: a well-respected Virginia judge who was Ruffin’s first-cousin-once-removed¹⁰⁰ and with whom Ruffin was known privately to consult on legal questions relating to the law of slavery¹⁰¹ took the opposing position.

And there is, finally, the matter of Ruffin’s language in *State v. Mann* itself. If the outcome of *Mann* were merely a reflection of the *zeitgeist*, Ruffin would have had no occasion to write anything more than a simple opinion reciting the facts and applying the law. As we know, though, that is not the sort of opinion that Ruffin wrote. He filled his opinion with his “lamentations” and “feelings,” with the “struggle” in his “breast,” with his “reluctance” to reach a result he found “harsh[]” but to which he was “compelled,” and with his “happiness” that ameliorating social conditions were diminishing the risk of a recurrence of the distasteful facts of the case. These are not the words of a judge who believes his outcome foreordained and his reasoning uncontroversial. *State v. Mann* itself therefore demonstrates that Thomas Ruffin wrote with a nervous eye toward the judgment of his contemporaries—contemporaries like his cousin, Judge William Brockenbrough, who lived in the same historical moment and the same culture as Ruffin, but who saw the world differently and reached different conclusions about the institution of slavery and the comparative roles of the courts and the legislature in tempering it.

All of these factors help us see more clearly that the hindsight defense misleadingly presents the past as a stream of monolithic moments rather than moments of alternatives, debate, and choice. Once we appreciate the contingency and diversity of the world in which historical figures lived, we can begin to think more carefully about how to evaluate the beliefs that those figures actually held and the choices they actually made.

Happily, Thomas Macaulay’s eloquent nineteenth-century essay on hindsight offers a framework for this more careful and realistic

99. *Id.* at 689.

100. See 2 THE PAPERS OF THOMAS RUFFIN 27 n.1 (J.G. de Roulhac Hamilton ed., 1918).

101. See Letter from William Brockenbrough to Thomas Ruffin (Feb. 7, 1831), in 2 THE PAPERS OF THOMAS RUFFIN, *supra* note 100, at 27–30.

inquiry. Macaulay recognized that the dangerous effect of a careless hindsight defense is to “put the best and the worst men of past times on the same level.”¹⁰² The proper questions to ask about those of a prior generation, Macaulay argued, are “not where they were, but which way they were going,” whether “their faces [were] set in the right or in the wrong direction,” and whether they were “in the front or in the rear of their generation.”¹⁰³ To be sure, there is an uncomfortable whiggishness to Macaulay’s questions—a supposition that the passage of time invariably leads to ever-greater wisdom, morality, and achievement. One need not believe with Macaulay that all historical motion is upward in order to appreciate the wisdom of his observation that every generation has ample opportunity for choice on the important questions of its day. Every generation has greater and lesser figures, heroes and villains—and the hindsight defense foolishly puts them all on the same level.

IV. THOMAS RUFFIN AND THE STRATEGY OF HINDSIGHT

There is an additional important problem with declining to judge Thomas Ruffin for his opinion in *State v. Mann* out of concern for the unfairness of hindsight. Whatever the merits of the hindsight defense, Thomas Ruffin is in a uniquely poor position to assert it. In *State v. Mann*, Ruffin used the passage of time as both a rhetorical device and a substantive remedy. Time, he maintained, would ameliorate the institution of slavery in ways that he, as a judge, could not. There is reason to think that Ruffin was not particularly serious about this prediction. But even if he was serious about it, we should not now have to entertain a claim that the passage of time bars us from judging him and his opinion.

In 1803, as a young man of sixteen, Thomas Ruffin left the South to attend Princeton in New Jersey.¹⁰⁴ There he encountered a different set of attitudes about the institution of slavery than those of his boyhood in Virginia and North Carolina. In fact, the year after Ruffin arrived at Princeton College, the New Jersey legislature passed “An Act for the Gradual Abolition of Slavery,” a law providing that female slaves born after July 4, 1804, would be free at age twenty-one and male slaves born after that date would be free at age twenty-

102. MACAULAY, *supra* note 68, at 303.

103. *Id.* at 305.

104. William A. Graham, *Life and Character of the Honorable Thomas Ruffin*, in 1 THE PAPERS OF THOMAS RUFFIN, *supra* note 46, at 21 (J.G. de Roulhac Hamilton ed., 1920).

five.¹⁰⁵ The young Ruffin was moved to write a letter to his father expressing his concerns about the institution. Ruffin's letter to his father does not survive, but his father's reply does, and in it, Sterling Ruffin said to his son, "[Y]ou feel for [slaves], lament, greatly lament their uncommon hard fate, without being able to devise any means by which it may be ameliorated!"¹⁰⁶ The elder Ruffin could envision only one path to a more humane treatment of slaves: the passage of time. He wrote:

[T]he fewer there are of this discription [sic] intermix'd with the Whites, the more they are under our immediate eye, and the more they partake of the manners and habits of the whites, and thereby require less rigidness of treatment to get from them, those services which are absolutely necessary for their support and very existence.¹⁰⁷

Unfortunately, Sterling Ruffin explained to his son, "there are too many with us to render a tolerably free intercourse of sentiment possible."¹⁰⁸ But as the ratio of black slaves to whites decreased, "less rigidness" would be possible.

This is a lesson that stayed with the young Thomas Ruffin. In fact, when the time came in *State v. Mann* for the adult Thomas Ruffin to opine on the criminal law's role in limiting brutality toward slaves, he reproduced his childhood lesson almost verbatim.¹⁰⁹ Ruffin held, as we know, that a slave's obedience could be enforced only through a permanent or temporary owner's "uncontrolled authority" over the slave's body, even to the point of malicious battery.¹¹⁰ This was a "harsh" proposition, Ruffin confessed, but "in the actual condition of things, it must be so[; t]here is no remedy."¹¹¹

What Ruffin meant, though, was that the *courts* could provide no remedy. As his father had taught him twenty-five years earlier, *the passage of time* would provide the remedy. "We are happy to see," Ruffin stated in the opinion, "that there is daily less and less occasion

105. See An Act for the Gradual Abolition of Slavery, 1804 N.J. Laws 251 (1804), available at <http://njlegallib.rutgers.edu/slavery/acts/A78.html>.

106. Letter from Sterling Ruffin to Thomas Ruffin (June 1804), in 1 THE PAPERS OF THOMAS RUFFIN, *supra* note 46, at 54.

107. *Id.* at 54–55.

108. *Id.* at 55.

109. The first to perceive the possibility of a connection between Sterling Ruffin's advice and Thomas Ruffin's *Mann* opinion was Mark Tushnet. See TUSHNET, *supra* note 15, at 92 ("The structure of argument Ruffin's father developed bears an uncanny resemblance to the structure of Ruffin's opinion in *State v. Mann*.").

110. *State v. Mann*, 13 N.C. (2 Dev.) 263, 266 (1829).

111. *Id.*

for the interposition of the Courts” to police a slave owner’s treatment of his slaves.¹¹² Existing statutes, the owner’s profit motive, and the community’s censure of brutal slave owners were already “produc[ing] a mildness of treatment and attention to the comforts of the unfortunate class of slaves, greatly mitigating the rigors of servitude and ameliorating the condition of the slaves.”¹¹³ And things would only get better, Ruffin predicted: “The same causes are operating and will continue to operate with increased action, until the disparity in numbers between the whites and blacks, shall have rendered the latter in no degree dangerous to the former, when the police now existing may be further relaxed.”¹¹⁴ Here was his father’s lesson about the benefits of a declining ratio of black slaves to whites, transformed into dictum in a judicial opinion. This result that his father had predicted was “greatly to be desired,” Thomas Ruffin said, but could best be achieved through the “progress” of “events” rather than by “rash expositions of abstract truths by a Judiciary tainted with a false and fanatical philanthropy.”¹¹⁵

In *State v. Mann*, Thomas Ruffin banked on the passage of time as the only legitimate remedy for the brutality that inhered in the institution of slavery as it then existed. “Be patient,” Ruffin implied. “A day will come when whites so outnumber black slaves that all reason for violent correction will have disappeared. Then you will look back and appreciate the rightness of this opinion, and understand why we judges could not intervene to protect the slave Lydia and others in her position.”

It is possible that Ruffin genuinely believed this childhood lesson and that he invoked it in *State v. Mann* in the best of faith. There is, however, some reason to doubt that. More than twenty-five years after *Mann*, in 1855, Thomas Ruffin was invited to give a speech to the State Agricultural Society of North Carolina on the virtues and advantages of North Carolina agriculture.¹¹⁶ He included a lengthy section on the excellence, productivity, and humaneness of slavery in North Carolina. It is a remarkable oration, describing North Carolina’s slaves as a “humble, obedient, quiet and . . . contented and cheerful race of laborers”¹¹⁷ and making the case that slave owners

112. *Id.* at 267.

113. *Id.* at 267–68.

114. *Id.* at 268.

115. *Id.*

116. See Address of Thomas Ruffin (Oct. 18, 1855) in 4 THE PAPERS OF THOMAS RUFFIN, *supra* note 1, at 323–37.

117. *Id.* at 334.

bestowed a blessing on their slaves by continuing their bondage rather than “turn[ing] them loose to their own discretion and self-destruction.”¹¹⁸ But he made a special effort to demonstrate that North Carolina’s slave owners generally were not “ruthless and relentless tyrants” who practiced “extraordinary severity” but rather benign and gentle owners who cared for their slaves.¹¹⁹ The owner’s self-interest led him to be “observant of the health and morals of his slaves; to care for them, and provide for them; to restrain them from baneful excesses, and employ them in moderate, though steady labor.”¹²⁰ Incredibly, Ruffin cited as proof of North Carolina slavery’s essential humaneness the fact of the “increase in the numbers of our slave population beyond the ratio of natural increase in the population of any other nation.”¹²¹ In *State v. Mann*, Ruffin argued that the decline of the slave population over time was what would guarantee their humane treatment. Twenty-five years later, he argued that the hearty *increase* in the slave population proved that slaves were well treated.

Thus, there is reason to suspect that Ruffin may have invoked his father’s lesson in *State v. Mann* as makeweight rather than as a serious prediction about the future. Perhaps he invoked it because it was a way to buy slavery some time and keep it out of the courts. Perhaps he invoked it to blunt or silence the criticism of *Mann* that he feared. But whatever Ruffin’s reasons were for invoking the passage of time as the chief remedy for the excesses of slavery in *State v. Mann*, that is the choice that he made. He predicted that the rightness and wisdom of *Mann* would be clear in hindsight. That is, Ruffin *invited* hindsight, and profited from the invitation. Surely, were he alive today, he would be in no position to complain about our accepting his invitation.

V. THOMAS RUFFIN: SLAVE BATTERER, SLAVE TRADER, SLAVE FAMILY BREAKER

I have argued thus far that the hindsight defense offers us little help in taking the true measure of a historical figure and that, whatever the merits of such a defense, Thomas Ruffin does not deserve to invoke it. In place of the simplistic trope that we cannot judge historical figures because “times were different then,” I have

118. *Id.* at 330.

119. *Id.* at 332.

120. *Id.*

121. *Id.*

suggested Thomas Macaulay's more nuanced inquiry into "not where they were, but which way they were going," whether "they [were] in the front or in the rear of their generation."¹²² This inquiry, in Thomas Ruffin's case, produces clear results. Thomas Ruffin was much closer to the rear than the front of his generation on questions relating to slavery.

This is a conclusion that the existing scholarship on Thomas Ruffin has not reached largely for want of evidence. According to Julius Yanuck, "Ruffin's papers reveal no ill-treatment of slaves."¹²³ Mark Tushnet reports more broadly that Ruffin's surviving correspondence "reflect[s] a great deal of attention to politics, rather less to personal matters, occasional references to domestic matters such as purchasing seed and meat, and even fewer references to slavery—itself perhaps an indication of the place slavery had in Ruffin's psychological universe."¹²⁴ These scholars presumably relied on the four-volume collection of Thomas Ruffin's papers published between 1918 and 1920 by Ruffin's great-grandson, the historian J.G. de Roulhac Hamilton. In the preface to his collection, Hamilton asserted that his "guide in making the selection of the letters to be printed" was "solely [his] desire to choose all such letters as may throw light upon the history of the State and Nation, or upon the personality and character either of Judge Ruffin or the writers."¹²⁵ It might be more accurate to say that Hamilton's desire was to choose those letters that threw a *positive* light on his great-grandfather—and to exclude, for example, a letter such as Ruffin's to his wife on January 29, 1833, in which he exclaimed that slaves were "creatures [who] have no feeling or thought, one or the other," and that "the conduct of negroes generally . . . would lead one to the belief, that all good feeling is banished from their bosoms."¹²⁶ In fact, Hamilton omitted from the collection a great number of letters and other materials that deal with slavery, including some that cast Thomas Ruffin as a batterer and trader of slaves and a breaker of slave families.¹²⁷

122. MACAULAY, *supra* note 68, at 305.

123. Yanuck, *supra* note 54, at 475.

124. TUSHNET, *supra* note 15, at 91.

125. J.G. de Roulhac Hamilton, *Preface* to 1 THE PAPERS OF THOMAS RUFFIN, *supra* note 46, at 3.

126. Letter from Thomas Ruffin to Anne Ruffin (Jan. 29, 1833), in Thomas Ruffin Papers (on file with the Southern Historical Collection, Wilson Library, The University of North Carolina at Chapel Hill) [hereinafter Thomas Ruffin Papers].

127. Many of these omitted materials form the basis of Parts VI(A), VI(B), and VI(C) of this Article. The materials themselves are located in the Thomas Ruffin Papers

A. *The Battery of Bridget*

Thomas Ruffin owned ten slaves when he married in 1811 and thirty-two by 1830.¹²⁸ His law practice in the 1810s and 1820s and his judicial duties between around 1830 and 1860 kept him on the road for long periods; as a result, he left most of his plantation affairs, including the management and discipline of his slaves, to overseers.¹²⁹ At least since the publication of Jean Bradley Anderson's *The Kirklands of Ayr Mount*,¹³⁰ the literature has reflected the fact that Ruffin knew that his overseers treated his slaves brutally.¹³¹ For example, in 1824, Ruffin's friend and former teacher Archibald D. Murphey alerted Ruffin to his overseers' "evil and barbarous Treatment of [his] Negroes," including the "barbecu[ing], pepper[ing] and salt[ing]" of one of them.¹³² And this was not the only time Ruffin received such warnings.¹³³ Ruffin's archived papers, which contain many more letters *to* Ruffin than *from* him, do not reveal how Ruffin responded to this information about his overseers.

But Ruffin's papers do reveal an episode that shows Ruffin's *own* brutality—a brutality that was probably tortious and may have been criminal. The story began in January of 1830, just a month before Ruffin heard the appeal in *State v. Mann*.¹³⁴ Ruffin owned two North Carolina plantations—one in Rockingham County and one called the Hermitage in Alamance County.¹³⁵ The Hermitage had originally belonged to Archibald D. Murphey, but by the early 1820s Murphey owed so much money to Ruffin and others that he was forced to sell the property to Ruffin in order to reduce the debt.¹³⁶ He struggled to reclaim it through the rest of the 1820s,¹³⁷ and his wife continued to

archived in the Southern Historical Collection at the University of North Carolina at Chapel Hill.

128. Hadden, *supra* note 12, at 5.

129. *See id.* at 5–6.

130. JEAN BRADLEY ANDERSON, *THE KIRKLANDS OF AYR MOUNT* (1991).

131. *See id.* at 52–53.

132. Letter from A.D. Murphey to Thomas Ruffin (June 3, 1824), in Thomas Ruffin Papers, *supra* note 126.

133. *See* Hadden, *supra* note 12, at 6.

134. *See id.* at 8.

135. *See* Manuscripts Department, Library of the University of North Carolina at Chapel Hill, Biographical Note, Inventory of the Thomas Ruffin Papers, 1753–1898, <http://www.lib.unc.edu/mss/inv/r/Ruffin,Thomas.html#d0e402> (last visited Feb. 25, 2009).

136. John A. McGeachey, *A Dreamer's Speculations: The Financial Plight of Archibald D. Murphey*, May 2002, <http://www4.ncsu.edu/~jam3/admurphey.htm>.

137. *See id.*

live there as the Ruffins' guest.¹³⁸ However, a final financial reversal late in 1829 forced Murphey to turn the Hermitage over to Ruffin for good,¹³⁹ and early in November of that year, he was imprisoned in Greensboro for debt for several weeks.¹⁴⁰ After his release, Murphey returned briefly to the Hermitage on the Haw River¹⁴¹ but then moved for the rest of the winter to Greensboro.¹⁴² His wife remained behind at the Hermitage.¹⁴³

Before leaving for Greensboro, the ailing Murphey pleaded with Ruffin to allow him to take along a slave of Ruffin's named Bridget:

If you knew or had any idea of my afflicted condition, you would not deny my request as to Bridget I cannot expect Cornelia¹⁴⁴ to remain with me long, and when she is gone I shall be left dependent upon those who know not how to nurse me, or take care of me in my sufferings. I appeal to your generosity on this subject, and to your sympathy for a human Being, who has suffered and is probably long doomed to suffer the extreme of human wretchedness.

If our Friendship does not entitle me to this small Boon at your Hands, let my affliction prefer its claim. I declare to you that I had rather be dead than to be deprived of all chance of good nursing in my sufferings. One thing is certain, I should quickly die. Let me therefore entreat you not to deprive me of Bridget, if I can make out to pay you for her.¹⁴⁵

As it happened, Ruffin had his own plans for Bridget, and they did not include Archibald Murphey. For reasons that the historical record does not reveal, Murphey's wife, who continued to live at the Hermitage, detested Bridget,¹⁴⁶ and Ruffin himself saw her as a bad

138. See Letter from Thomas Ruffin to Archibald D. Murphey (Oct. 29, 1831), in Thomas Ruffin Papers, *supra* note 126 (referring to Mrs. Murphey's residence with the Ruffin family).

139. See McGeachey, *supra* note 136.

140. See *id.*; see also Letter from Archibald D. Murphey to Thomas Ruffin (Nov. 17, 1829), in 1 THE PAPERS OF THOMAS RUFFIN, *supra* note 46, at 523 n.1.

141. See Letter from Archibald D. Murphey to Thomas Ruffin (Jan. 13, 1830), in 1 THE PAPERS OF THOMAS RUFFIN, *supra* note 46, at 537–38.

142. See Letter from V.M. Murphey to Thomas Ruffin (Feb. 10, 1830), in 1 THE PAPERS OF THOMAS RUFFIN, *supra* note 46, at 538.

143. See Letter from Thomas Ruffin to Archibald D. Murphey, *supra* note 138.

144. Cornelia was a slave who principally served Murphey's mother or mother-in-law. See Letter from V.M. Murphey to Thomas Ruffin, *supra* note 142.

145. Letter from Archibald D. Murphey to Thomas Ruffin, *supra* note 141.

146. One possibility that suggests itself is, of course, an emotional or sexual relationship between Murphey and Bridget. The archival record is, not surprisingly, silent

influence on the rest of his slaves. As Ruffin later explained in a letter to Murphey, Bridget "was the aversion [and] terror to the highest degree of all the relations of the mother of [Murphey's] children" and was of a "detestable character" who Ruffin feared "would impair the value of her descendants, whom I owned; not to speak of the other slaves which I got from you over part of which she had great influence."¹⁴⁷ So eager was Ruffin to get rid of Bridget that he had tried to make arrangements "to sell her at a great distance" and had instructed his agent that if he could not sell her, he should give Bridget away to any man who would promise that she would "not be sold or live short of a thousand miles from" the Hermitage.¹⁴⁸

Moved by Murphey's plea for Bridget, Ruffin abandoned these plans to ship her off to parts unknown and instead decided to give her to his ailing friend outright and by deed, without payment.¹⁴⁹ Murphey later reported that he understood that Ruffin did not want Bridget returning to the grounds of the Hermitage,¹⁵⁰ but Ruffin's feelings in fact ran even deeper than that. Ruffin had written to Murphey:

I did never expect, [that Bridget] would be permitted to annoy me in any way much less that the feelings of the venerable Matron, who honor me and mine by her residence with us [and] of the ladies of my family would be outraged by having her brought here, nor that the value of my negroes would be impaired by a permitted intercourse between them and a person of this woman's character, temper, disposition towards me [and] mine, habits of life, dress, indulgences, [etc.].¹⁵¹

Thomas Ruffin really did not like the slave Bridget.

Ruffin was therefore furious when, toward the end of October of 1831, he learned that Bridget had been spotted on the grounds of the Hermitage.¹⁵² "With the view of punishing her contumacy and defending my rights of property," Ruffin explained to Murphey, he "endeavored to find her[,] but she was gone."¹⁵³ He instructed his

on that possibility, except for the evidence cited here of Mrs. Murphey's distaste for Bridget and her husband's intense desire for her companionship in his illness.

147. Letter from Thomas Ruffin to Archibald D. Murphey, *supra* note 138.

148. *Id.*

149. See *id.*; see also Letter from Archibald D. Murphey to Thomas Ruffin (Jan. 24, 1830), in Thomas Ruffin Papers, *supra* note 126.

150. See Letter from Archibald D. Murphey to Thomas Ruffin (Dec. 21, 1831), in Thomas Ruffin Papers, *supra* note 126.

151. Letter from Thomas Ruffin to Archibald D. Murphey, *supra* note 138.

152. See *id.*

153. *Id.*

overseer to whip her if he could find her, but when the overseer found her, she maintained that she had come to the Hermitage with Murphey as his servant, so the overseer did not whip her.¹⁵⁴ When Murphey left the Hermitage the next day, Ruffin told Murphey, Bridget “remained prowling about my plantation or near it,” which had a very unsettling effect on the rest of Ruffin’s slaves.¹⁵⁵

On the morning of Saturday, October 28, 1831, Ruffin took a walk toward the mill buildings at the Hermitage and happened upon Bridget “posted at the bridge.”¹⁵⁶ According to Ruffin, Bridget “gave [him] a look of insolent audacity which Patience itself could not swallow.”¹⁵⁷ Ruffin had had enough. “Upon the instant,” Ruffin reported to Murphey, he “gave her a good caning.”¹⁵⁸ That is, Judge Ruffin of the Supreme Court of North Carolina assaulted Murphey’s slave Bridget, beating her with some sort of rod.

The legal ramifications of this assault were potentially serious, and Ruffin, having recently authored *State v. Mann*, undoubtedly knew it. Bridget did not belong to Ruffin; he had given a deed for her to Murphey more than a year before the assault. Neither was Ruffin Bridget’s hirer, as John Mann was Lydia’s in *State v. Mann*. As a white non-owner and non-hirer, Ruffin therefore arguably had only the rights of what the law called a “stranger” in relation to Bridget,¹⁵⁹ and a stranger’s rights were few. Under North Carolina law of the day, at a minimum, a stranger’s assault on the slave of another exposed the stranger to liability in damages to the slave’s owner.¹⁶⁰ Murphey therefore likely had a cause of action against Ruffin for the tort of trespass.

Even criminal liability was not out of the question. As discussed earlier,¹⁶¹ in the 1823 case of *State v. Hale*, the Supreme Court of North Carolina held that a white man who beat the slave of another could be indicted at common law for battery.¹⁶² A slave’s provocation

154. *See id.*

155. *Id.*

156. *Id.*

157. *Id.*

158. *Id.*

159. *See State v. Hale*, 9 N.C. (2 Hawks) 582, 584 (1823).

160. *See generally* *Williams v. Averitt*, 10 N.C. (3 Hawks) 308 (1824) (concerning an action in trespass for beating of the slave of another); *Hale*, 9 N.C. (2 Hawks) at 589 (“An assault and battery is not indictable in any case to redress the private injury, for that is to be effected by a civil action . . .”); *Richardson v. Saltar*, 4 N.C. (Car. L. Rep.) 505 (1817) (holding that members of a patrol party who were not themselves official patrollers were liable in trespass for beating the slave of another).

161. *See supra* notes 92–94 and accompanying text.

162. *See Hale*, 9 N.C. (2 Hawks) at 583.

of the violence could provide the accused batterer with a defense, and the *Hale* court recognized that “many circumstances which would not constitute a legal provocation for a battery committed by one white man on another would justify it if committed on a slave, provided the battery were not excessive.”¹⁶³ This was an allusion to the court’s 1820 observation in *State v. Tacket* that while mere words could not amount to legal provocation in a confrontation between two white men, they might suffice as provocation when uttered by a slave.¹⁶⁴ Bridget, however, did not say a word. She merely gave Ruffin a look that he did not like. No reported case in North Carolina (or elsewhere) treated a look askance from a slave as legal provocation to battery.¹⁶⁵

In *Southern Slavery and the Law 1619–1860*, Thomas D. Morris reports that North Carolina followed Virginia law in permitting the owner of a plantation to whip a slave “if [the slave] was on the land without written permission from his owner or had not been sent on some lawful business.”¹⁶⁶ If this was so, and if Bridget was actually on Ruffin’s property when he came upon her,¹⁶⁷ then perhaps Ruffin had the legal right to cane her. Yet Morris’s reading of the relevant North Carolina statute may be mistaken. It authorized a landowner to administer a “severe whipping” to a slave who came onto his land with a dog, gun, or weapon unaccompanied by a white person, or who “travel[led] from his master’s land by himself” along any but “the most usual and accustomed road.”¹⁶⁸ It is certainly not clear that this

163. *Id.* at 586.

164. See *State v. Tacket*, 8 N.C. (1 Hawks) 103, 107, 109 (1820).

165. In a much later case, *State v. Bill*, 35 N.C. (13 Ired.) 254 (1852), the Supreme Court of North Carolina noted that it was “impossible to define” the “acts in a slave toward a white person” that would “amount to insolence,” though it listed “a look, the pointing of a finger, a refusal or neglect to step out of the way when a white person is seen to approach” as examples of insolence. *Id.* at 257. These forms of insolence were, the court suggested, adequate reasons to bring a slave before a magistrate for possible punishment. *Id.* The *Bill* case did not, however, establish that these were valid reasons for a non-owner to engage in self-help and inflict a caning himself. See *id.*

166. MORRIS, *supra* note 96, at 197, 482 n.66.

167. Ruffin wrote to Murphey that Bridget was “posted at the bridge” when he came upon her. Letter from Thomas Ruffin to Archibald D. Murphey, *supra* note 138. It is impossible to be certain whether this was on or off Ruffin’s property, although the property did straddle both the Haw River and the Great Alamance Creek. Perhaps the “bridge” to which Ruffin refers in this letter was a bridge across one of those; if so, Bridget would have been on Ruffin’s property at the time he beat her. On the other hand, Ruffin stated in the letter that Bridget had been spotted “prowling about [his plantation] or near it,” which leaves open the possibility that she was not on his property at the time of the beating. *Id.* (emphasis added).

168. JOHN HAYWOOD, *A MANUAL OF THE LAWS OF NORTH-CAROLINA* 518 (1819).

statute authorized Thomas Ruffin to beat Bridget with a cane for being at the Hermitage and looking at him wrong.

And even if the statute permitted such violence, Thomas Ruffin himself did not seem to know it. The very day of the incident, Ruffin sat down to write a long letter to Murphey.¹⁶⁹ Ruffin obviously knew that word of the caning would get back to him, and he nervously sought Murphey's assurance that he would pursue no legal remedy. One of his purposes in writing, Ruffin explained, was to "to avow to you as the owner of this woman, the force I have used to her. If you think she merited only what she got, I shall be gratified at the concord of our views."¹⁷⁰ On the other hand, said Ruffin, "[s]hould my conduct meet your disapproval, the more obvious is the propriety of the exposition I have made of it."¹⁷¹ Ruffin closed the letter by expressing "the hope . . . that [Murphey would] find no cause of complaint against" him, but he did not defend himself by citing any common-law or statutory right to beat Bridget.¹⁷² Murphey let Ruffin twist a bit before replying; only two months later, on December 21, 1831, did Murphey write to Ruffin that his "flogging [sic] Bridget ha[d] given [him] no offense."¹⁷³

This single episode, heretofore unknown in the literature, does not transform Thomas Ruffin into one of the monsters of his time, though his assault must have scarred Bridget and may have left her permanently impaired. The episode does, however, supply important context about the capacity for brutality in the judge who presented himself to the public as so deeply distressed by the harshness of *State v. Mann*. Sally Hadden wrote of Thomas Ruffin that "[a]s the son of a minister who taught his son to care for his slaves personally but whose job forced him to leave them in the hands of brutal overseers, Ruffin's conscience must have been pricked, just a little, by the *Mann* opinion."¹⁷⁴ Ruffin's beating of Bridget at the Hermitage not long after the *Mann* decision calls such an assessment of the quality of Ruffin's conscience into question.

B. Speculating on Human Beings

Sally Hadden was the first scholar to bring to prominent light Thomas Ruffin's involvement in the slave-trading business in the

169. Letter from Thomas Ruffin to Archibald D. Murphey, *supra* note 138.

170. *Id.*

171. *Id.*

172. *Id.*

173. Letter from Archibald D. Murphey to Thomas Ruffin, *supra* note 150.

174. Hadden, *supra* note 12, at 11.

1820s.¹⁷⁵ She sensibly maintained that it was difficult to reconcile Ruffin's willingness to engage in the trade in slaves with the idea that Ruffin was sincere in his professed paternalism toward them.¹⁷⁶ She also surmised that Ruffin abandoned the slave-trading business at the death of his business partner because he had come to see that his "neighbors or colleagues found his activities in the trade distasteful."¹⁷⁷ But because she viewed Ruffin's slave-trading partnership as very financially rewarding, she suggested that his reasons for engaging in the slave trade may have been "only financial at heart" rather than reflecting anything deeper about his moral vision.¹⁷⁸

Again, the full record of Ruffin's involvement in the slave trade complicates this picture.¹⁷⁹ Ruffin was exposed to blunt disapproval of his participation in the slave trade shortly after beginning it, but he continued it anyway, even while serving as a superior court judge. And it is difficult to see Ruffin's slave trading principally as a remedy for financial distress; the partnership's financial records make clear that Ruffin was a speculator in the slave trade, not someone who depended on its profits.

Thomas Ruffin was the primary equity partner in the two-man slave-trading partnership he set up with Benjamin Chambers.¹⁸⁰ Ruffin's papers do not reveal how Ruffin and Chambers first met, although they do show that the two men had an attorney-client relationship that predated the 1822 launch of their slave-trading business by some two years.¹⁸¹ Their venture was actually two

175. See *id.* at 7–8. Hadden was not the first to note Ruffin's involvement in the slave-trading business; Jean Bradley Anderson briefly described it in her 1991 book *The Kirklands of Ayr Mount*. ANDERSON, *supra* note 130, at 52.

176. Hadden, *supra* note 12, at 8.

177. *Id.* at 7.

178. *Id.* at 8.

179. This full record includes Ruffin's correspondence from his partner Benjamin Chambers from 1821 to 1826 and from others relating to the wrapping up of Chambers's estate after his death in 1827, two partnership agreements between Ruffin and Chambers, Ruffin's day books detailing his expenditures and income between 1821 and 1831, the partnerships' accounting ledger, and annual inventories of slaves purchased and sold for two of the five years that the business operated. *But cf.* Hadden, *supra* note 12, at 7 ("[R]ecords of the [Ruffin-Chambers] partnership are scanty.").

180. Ruffin invested \$4,000 in the partnership at its start; Chambers invested \$2,000 and devoted his slave Dick to the enterprise. See Articles of Agreement between Benjamin Chambers and Thomas Ruffin (Oct. 26, 1821), in Thomas Ruffin Papers, *supra* note 126.

181. See Letter from Benjamin Chambers to Thomas Ruffin (Aug. 18, 1820), in Thomas Ruffin Papers, *supra* note 126. In a much earlier letter, a client of Ruffin's sought advice on whether to pursue a collection action against a "Benjamin Chambers," but it is

successive partnerships—one that the two men created in October of 1821 for a three-year term, and a second that they created in June of 1825 for a two-year term that was cut short by Chambers's death in March of 1827.¹⁸² The partnership's business model was simple: they would buy slaves in the Upper South, transport them to the Deep South, and sell them there at a profit.¹⁸³ Ruffin provided two-thirds of the first partnership's capital of \$6000; Chambers provided the other \$2000 and did all of the buying, transporting, and selling of slaves.¹⁸⁴ The capitalization of the second partnership was also \$6000, but Ruffin provided all of it; Chambers contributed only his sweat equity and the labors of his slave Dick to that venture.¹⁸⁵

Michael Tadmán has argued persuasively that the nineteenth-century Southern slave trader was not the pariah in white Southern society that Northern abolitionists and some Southern slavery defenders made him out to be.¹⁸⁶ Yet there can be little question that trafficking in slaves was not seen as an affirmatively *honorable* trade¹⁸⁷ and that those men like Thomas Ruffin who managed to rise to positions of high station in Southern society did so *despite* their slave-trading rather than *because of* it.¹⁸⁸ Surely there were very few judges in the 1820s who trafficked in slaves on the side. Yet this is

impossible to know whether this was the same Benjamin Chambers with whom Ruffin ultimately went into the slave-trading business. See Letter from John Johnston to Thomas Ruffin (Feb. 5, 1814), in Thomas Ruffin Papers, *supra* note 126.

182. See Articles of Agreement between Benjamin Chambers and Thomas Ruffin, *supra* note 180; Articles of Agreement between Benjamin Chambers and Thomas Ruffin (June 15, 1825), in Thomas Ruffin Papers, *supra* note 126. Chambers died on March 21, 1827, in Abbeville, South Carolina, after a long illness; Ruffin learned of his partner's death in a letter from the administrator of Chambers's estate about a week later. See Letter from A.B. Arnold to Thomas Ruffin (Mar. 27, 1827), in Thomas Ruffin Papers, *supra* note 126.

183. This was a very common trading pattern in the 1820s. See MICHAEL TADMAN, *SPECULATORS AND SLAVES: MASTERS, TRADERS, AND SLAVES IN THE OLD SOUTH* 41 (1989).

184. See Articles of Agreement between Benjamin Chambers and Thomas Ruffin (Oct. 26, 1821), *supra* note 180.

185. See Articles of Agreement between Benjamin Chambers and Thomas Ruffin (June 15, 1825), *supra* note 182.

186. See TADMAN, *supra* note 183, at 179–210.

187. See KENNETH M. STAMPP, *THE PECULIAR INSTITUTION: SLAVERY IN THE ANTE-BELLUM SOUTH* 239 (1956) (noting that the “traffic in slaves . . . was offensive not only to abolitionists but also to many of slavery's staunchest [sic] defenders.”); TUSHNET, *supra* note 15, at 88 (“In the 1820s slave trading was not an entirely respectable occupation among honorable men of the South.”).

188. See TADMAN, *supra* note 183, at 192–200. But cf. STAMPP, *supra* note 187, at 268 (“[I]t was not at all uncommon for merchants or bankers in the towns of the Upper South to act as silent partners of the speculators[, and] many respectable commission merchants, factors, general agents, and lawyers engaged in a little slave trading as a side line.”).

what Thomas Ruffin did. He agreed to serve as a judge of the Superior Court of North Carolina in the summer of 1825, just days after he formally renewed his slave-trading partnership with Benjamin Chambers with a new infusion of cash.¹⁸⁹

The first partnership agreement that Ruffin drafted in 1821 hints at his awareness of the dishonor attached to slave-trading: he included a provision that “the whole business of buying and selling is to be conducted by . . . Chambers . . . *and is to be carried on in the name of said Chambers alone.*”¹⁹⁰ We cannot know exactly why Ruffin did not want his name attached to his business’s slave-trading activities, but worries about the their dishonor seem a likely explanation. And even if the potential dishonor of the slave trade was not apparent to Thomas Ruffin before he launched his business, it became clear in a letter he received shortly thereafter. The letter came from a man named Quinton Anderson of Caswell, North Carolina, whom Ruffin had invited to join in the slave business, presumably as an additional investor. Anderson declined Ruffin’s invitation, and given Ruffin’s prominence, might have been expected to do so diplomatically. Anderson was instead blunt: “I have after giving the subject mature consideration, come to the conclusion that the situation of my business forbids that I should embark in business of that nature, not the least consideration with me, is *the trafic [sic] itself, against which the feelings of my mind in some measure revolt.*”¹⁹¹ This letter leaves no doubt that Thomas Ruffin knew he was embarking on a business venture that some of his peers morally condemned.

Yet the literature has suggested that Ruffin was willing to take this step because he was financially strapped and the slave trade permitted him to “address[] his financial problems.”¹⁹² Here too, the full archival record complicates the accepted story. Thomas Ruffin’s overall financial situation was unquestionably precarious by around

189. See Articles of Agreement between Benjamin Chambers and Thomas Ruffin (June 15, 1825), *supra* note 182. On Ruffin’s agreement to serve as a superior court judge, see 1 THE PAPERS OF THOMAS RUFFIN, *supra* note 46, at 326 n.1, 327. Mark Tushnet has noted that Ruffin “was not formally a trader in slaves when he became a supreme court judge.” TUSHNET, *supra* note 15, at 88. This is true, but it misses the important fact that Ruffin *was* formally a slave trader when he became a superior court judge.

190. Articles of Agreement between Benjamin Chambers and Thomas Ruffin (Oct. 26, 1821), *supra* note 180 (emphasis added). The second partnership agreement, signed in June of 1825, had the same provision. Articles of Agreement between Benjamin Chambers and Thomas Ruffin (June 15, 1825), *supra* note 182.

191. Letter from Quinton Anderson to Thomas Ruffin (Jan. 15, 1822), in Thomas Ruffin Papers, *supra* note 126.

192. TUSHNET, *supra* note 15, at 88.

1820 because he stood as a surety on sizeable debts of his friend and former teacher Archibald D. Murphey that Murphey was having an increasingly difficult time paying.¹⁹³ Yet Ruffin's papers reveal no true sense of panic until December of 1821, when Murphey was arrested and jailed for nonpayment of a note. At that moment, and for a time thereafter, Ruffin's papers reflect anxiety on Ruffin's part that Murphey's financial problems might swamp him as well.¹⁹⁴

But by the time this crisis arrived, Ruffin was already in the slave-trading business. He had launched it on October 20, 1821—some six weeks before Murphey's arrest and its economic ripple effects.¹⁹⁵ Ruffin had \$4,000 of cash on hand to capitalize the business, as well as \$300 extra that he was able to advance to Chambers so that he could buy Ruffin an additional "negro boy."¹⁹⁶ Furthermore, in June of 1825, when Ruffin launched his second slave-trading partnership with Chambers with a cash investment of \$6,000, Ruffin was not in dire financial straits. In fact, almost simultaneously with setting up the new slave-trading business, Ruffin left his comparatively lucrative private practice of law in order to take a lower-paying state trial court judgeship.¹⁹⁷ The claim that Ruffin started and then stayed in the slave business principally because it was a business whose profits helped him deal with his "precarious" financial situation¹⁹⁸ thus appears overstated.

This is not to deny that Ruffin's slave-trading business was at least initially quite profitable. At the settling of the affairs of the first Ruffin-Chambers partnership in June of 1825 after three years of business, Ruffin got back his initial investment of \$4,000 along with a

193. See McGeachey, *supra* note 136; see also Letter from John Fitzhugh May to Thomas Ruffin (Nov. 9, 1821), in Thomas Ruffin Papers, *supra* note 126 (expressing concern over Ruffin's "situation" as surety on Archibald D. Murphey's debts, but expressing confidence that "with the advantages that [Ruffin] possess[ed]," he would "have no occasion to despair").

194. See Letter from Thomas Ruffin to Solomon Debow (Jan. 10, 1822), in Thomas Ruffin Papers, *supra* note 126 ("You have probably heard from some of your friends in this part of the Country of the total ruin of our worthy friend Archibald D. Murphey Esq. & of the very large sums of money which I have paid and shall have to pay as his surety—they are of such magnitude as to induce in me serious apprehensions of meeting with the same fate which has befallen him.").

195. See Thomas Ruffin, Daybook Entry (Oct. 20, 1821), in Thomas Ruffin Papers, *supra* note 126.

196. *Id.*

197. See Letter from A.D. Murphey to Thomas Ruffin (July 13, 1825), in 1 THE PAPERS OF THOMAS RUFFIN, *supra* note 46, at 327 ("Your Profits may be less: but you will be able to scuffle through the difficulties.").

198. Hadden, *supra* note 12, at 7.

profit of nearly \$5,500.¹⁹⁹ He more than doubled his money in three years. That good fortune, however, did not last. In the second partnership, Ruffin reinvested his original \$4,000 investment from the first partnership along with nearly a third of the first partnership's profits. Here Ruffin lost quite badly. He did not even see the full return of his initial investment on the 1825 partnership, let alone a profit; he put \$6,000 into the partnership and got back only \$4,094.²⁰⁰ Ruffin wrote to his wife of his despondency over this loss in June of 1827:

I find that the man who owed me money²⁰¹ has left but little to pay with & that I am likely to lose, probably, two or three thousand dollars—a circumstance not very pleasant at any time, but particularly unwelcome in the present limited state of my income. What I shall get will also be probably some time in coming. I do not know but that this loss is the chief cause of the *fatigue* I experience; but I am really almost broken down.²⁰²

Thus, to the extent that Ruffin was looking to his slave-trading business as a salve for financial distress, he was sorely disappointed; his overall cash investment of \$10,000 over a five-year period netted him a total gain of only about \$3,500,²⁰³ or less than six percent on an annualized basis.

199. See Thomas Ruffin Ledger Book, Entry 127, in Thomas Ruffin Papers, *supra* note 126.

200. See *id.*

201. That Ruffin did not refer to Chambers by name or as his slave-trading partner raises the tantalizing possibility that he concealed his involvement in the slave-trading business even from his own wife.

202. Letter from Thomas Ruffin to Anne Ruffin (June 25, 1827), in Thomas Ruffin Papers, *supra* note 126.

203. This calculation clears up some inaccuracies in the scholarship. Sally Hadden reported that "Ruffin's notes show that *the partnership* turned more than a \$6,000 profit during a three-year period." Hadden, *supra* note 12, at 7 (emphasis added). Apparently relying on Hadden's numbers, Mark Tushnet wrote that "Ruffin invested four thousand dollars in the initial purchase of slaves, and eventually he made a profit of about six thousand dollars in the slave-trading venture." TUSHNET, *supra* note 15, at 88. Hadden's number appears to be too small and Tushnet's too large. Ruffin's ledger reflects that the 1821 partnership produced profit *to him* in the amount of around \$5,500, see Thomas Ruffin Ledger Book, Entry 127, *supra* note 199, but *the partnership's* profits would have been *double* that, because the partnership agreement provided that the partnership's profits were to be "equally divided" between Chambers and Ruffin. See Articles of Agreement between Benjamin Chambers and Thomas Ruffin (Oct. 26, 1821), *supra* note 180. If Ruffin received about \$5,500 in profits, then *the 1821 partnership's* profits must have been in the vicinity of \$11,000. Tushnet's characterization of Ruffin's success in the slave-trading business appears to have confused Hadden's erroneous statement of the 1821 *partnership's* profits with the amount that *Thomas Ruffin* "eventually . . . made . . . in

The crucial point, however, is this: Thomas Ruffin's ledger book and day books reveal that he did *not* look to his slave-trading business as any sort of salve for financial distress. Notwithstanding the profit it achieved, Ruffin never took so much as a penny in cash from his first slave-trading partnership between October of 1821 and June of 1825.²⁰⁴ He simply allowed the money to sit in the hands of Benjamin Chambers—in the form of cash and slaves—as Chambers wandered the East Coast for over three years. In June of 1825, when Ruffin finally received a profit from the first partnership, he rolled more than a third of it along with his original investment back into the second partnership. This was not a man who, in Mark Tushnet's words, "addressed his financial problems by trading in slaves."²⁰⁵ He did not get into the business of trafficking in human beings, or stay in it once he had started, in order to make ends meet, or to offset losses from other faltering investments and enterprises on whose income he and his family depended. Thomas Ruffin got into the slave-trading business as a speculator, plain and simple.

C. *Breaking Up Slave Families*

Thomas Ruffin's career as lawyer, plantation owner, and judge coincided with what scholars have called the "paternalist" or "domesticating" era of American slavery. This was a time when slave owner narratives came to reflect a "domesticating mission to sponsor among slaves the virtues of the 'Victorian family' "²⁰⁶ and pro-slavery propaganda maintained that "masters were emotionally attached to their slaves [and] encouraged the institution of the family among them."²⁰⁷ In this world of supposed emotional attachment and "family values," the break-up of slave families—husbands from wives, children from parents—was something to avoid. Slave owners, moved by their own gentle and protective emotions toward their slaves, would be expected to try to keep slave families together.

This paternalism shows up in Thomas Ruffin's judicial writing around the time of *State v. Mann*. In *Cannon v. Jenkins*,²⁰⁸ a case that

the slave-trading venture." TUSHNET, *supra* note 15, at 88. This article shows that Ruffin actually made only about \$3,500 on a total investment of \$10,000.

204. Both his ledger and his day books make this clear; at no point between the founding of the partnership in October of 1821 and its settlement in June of 1825 is there any indication of any partnership payment to Ruffin.

205. TUSHNET, *supra* note 15, at 88. Though the quoted words are Tushnet's, he makes clear that the underlying claim is Sally Hadden's. *See id.*

206. TADMAN, *supra* note 183, at 9.

207. *Id.* at 111.

208. 16 N.C. (1 Dev. Eq.) 245 (1830).

the Supreme Court of North Carolina decided just a few months after *Mann*, the question was whether an estate administrator fraudulently sold four slave brothers as a single lot to a bidder with whom he had allegedly colluded. Ruffin upheld the sale but noted in extended dictum that “[m]ost commonly the articles sell best singly; and therefore, they ought, in general, to be so offered.”²⁰⁹ Separate sales were normally what “must be done if the executor discovers that the interest of the estate requires it; for he is not to indulge his charities at the expense of others.”²¹⁰ But Ruffin could not fully associate himself with a rule that counseled the forcible separation of four young brothers. Echoing the language of his then-recent opinion in *State v. Mann*, he acknowledged that “[i]t would certainly have been *harsh* to separate these four boys and sever ties which bind even slaves together.”²¹¹ He therefore softened his stance, avowing that if an executor sold four slave brothers as a group rather than singly, “the Court would not punish him for acting on *the common sympathies of our nature* unless in so doing he hath plainly injured those with whose interest he stands charged.”²¹²

Ruffin’s tone in *Cannon v. Jenkins* is very much of a piece with that of *State v. Mann*: Ruffin-the-judge articulates the tough rule of the law while Ruffin-the-man avows the “harshness” of the law’s result and its inconsistency with the feelings that arise from “the common sympathies of our nature.” But when it came to protecting slave families, Ruffin’s own actions repeatedly belied the paternalistic and sensitive tone of his judicial writings. Thomas Ruffin repeatedly broke up slave families or kept them apart, even in the face of moving evidence that his harshness took a severe emotional toll on his slaves.

Nowhere was this more starkly apparent than in Ruffin’s involvement in the slave trade. In the accounting that Benjamin Chambers sent to Ruffin for the partnership’s trades in 1823 and 1824, Ruffin saw that their transactions included “Mary a girl [of] 15,” bought for \$150 and sold for \$375; “Mindy a girl [of] 15,” bought for \$260 and sold for \$380; “Eliza a girl [of] 13,” bought for \$175 and sold for \$390; “Patty a girl [of] 13,” bought for \$150 and sold for \$300; “Jo a boy [of] 11,” bought for \$160 and sold for \$375; and “Kathrine a girl

209. *Id.* at 247.

210. *Id.* at 248.

211. *Id.* (emphasis added); cf. *State v. Mann*, 13 N.C. (2 Dev.) 266 (1829) (“I most freely confess my sense of the *harshness* of this proposition.”) (emphasis added).

212. *Cannon*, 16 N.C (1 Dev. Eq.) at 248.

[of] 11,” bought for \$140 and sold for \$300.²¹³ The partnership’s 1825 transactions included “Little Charles,” a boy of 10, and his “2 cisters [sic] younger,” whom Chambers bought for \$500 and sold for \$825; and Winny, a girl of 9, whom Chambers bought for \$240 and sold for \$310.²¹⁴ These were not children bought and sold with their parents or (except in the case of “Little Charles” and his “2 cisters [sic]”) with their siblings; they were children that the partnership bought and sold alone.²¹⁵ Each and every one of these sales separated children from parents, siblings from siblings, or both.

Yet Ruffin had emotional distance from these transactions; his partner Chambers was the one who bought these children, transported them south, and sold them. One might therefore expect that Ruffin was more tender with the slaves he knew. But often he was not. For example, in 1852, a neighbor of Ruffin’s offered him \$150 for a slave named Noah who had been Ruffin’s for many years and who was married to another of Ruffin’s slaves.²¹⁶ Ruffin told his wife to have someone ask Noah whether he wanted to be sold;²¹⁷ his daughter soon reported that Noah was “extremely anxious to spend the remnant of his pilgrimage here on earth in the society of his beloved better half.”²¹⁸ Ruffin disregarded Noah’s preference and sold him for \$150. When the time came for the slave to leave the Ruffin plantation, Ruffin’s daughter Sally reported to her father that “Old Uncle Noah . . . disliked parting very much.”²¹⁹

Not surprisingly, Ruffin showed no greater compassion for the family relations of the slave Bridget, whom he caned for giving him an insolent look in the fall of 1831. Before 1829, Ruffin owned both Bridget and her daughter. When Archibald Murphey asked Ruffin for Bridget at the end of that year, Ruffin, who had been planning to sell Bridget so that she would “not live short of a thousand miles” away from his plantation and her daughter, agreed to give her to

213. See An Acct of the Purchase and Sale of Slaves Made by Benjamin Chambers, (1823), in Thomas Ruffin Papers, *supra* note 126; Sale of Negroes in South Carolina and Georgia, (1824), in Thomas Ruffin Papers, *supra* note 126.

214. See Purchase of Negroes, (July 1825), in Thomas Ruffin Papers, *supra* note 126; Sale of Negroes in Alabamma [sic], (1825), in Thomas Ruffin Papers, *supra* note 126.

215. In those cases where Chambers bought and sold a family group—siblings, or a parent with children—he noted this explicitly in his accounting.

216. Letter from Thomas Ruffin to Anne Ruffin (Jan. 3, 1852), in Thomas Ruffin Papers, *supra* note 126.

217. See *id.*

218. Letter from Sally Ruffin to Thomas Ruffin (Jan. 11, 1858), in Thomas Ruffin Papers, *supra* note 126.

219. Letter from Sally Ruffin to Thomas Ruffin (Jan. 17, 1852), in Thomas Ruffin Papers, *supra* note 126.

Murphey instead. But he explained to Murphey that a person of Bridget's "character, temper, disposition toward me and mine, habits of life, dress, indulgences, etc." would "corrupt" her daughter and "impair" the daughter's value to him. He therefore insisted that Bridget have no contact with her daughter and forbade them "to meet or have any intercourse" whatsoever.²²⁰

Ruffin was similarly cold-hearted in rejecting another slave owner's effort to reunite a slave with his wife. In July of 1838, William Hooper of Pittsboro, North Carolina, proposed to sell Ruffin a slave named November, whose wife was a seamstress to Ruffin's wife Anne. "He seems to think his fate a hard one," wrote Hooper, "that he can go only once a month to see his wife, and then have to walk such a distance or hire a horse" in order to make the trip.²²¹ Hooper explained that November had been "in the service of the College" (presumably the University of North Carolina) but was no longer engaged there and "would do better in the country near his wife."²²² November was "sound & strong," "honest & sober," Hooper assured Ruffin, and "a good house servant."²²³ Hooper asked Ruffin at least to "hire him for the rest of the year, or the next year,"²²⁴ if he was not willing to buy him outright, so that November and his wife could be reunited.

Thomas Ruffin was dismayed by Hooper's request. In a letter to his wife notifying her of Hooper's request, Ruffin avowed that he had "determined never to increase my cares & troubles by any addition to any dependents or property of that species."²²⁵ However, Ruffin noted ruefully,

[I]t is one of the obligations, as well as curses, on those who stand in the relation of master to that unhappy race, whether to part with one, altho' a good servant, or to purchase another, perhaps worthless, or, at the least, not wanted, rather than sever the tie of supposed affection, or the cohesion which unites them.²²⁶

220. See Letter from Thomas Ruffin to Archibald D. Murphey, *supra* note 138.

221. Letter from William Hooper to Thomas Ruffin (July 11, 1838), in Thomas Ruffin Papers, *supra* note 126.

222. *Id.*

223. *Id.*

224. *Id.*

225. Letter from Thomas Ruffin to Anne Ruffin (July 13, 1838) in Thomas Ruffin Papers, *supra* note 126.

226. *Id.*

He told his wife that he feared that this “supposed affection” of November for his wife would make it impossible for the Ruffins to “resist” November’s wishes, and that if they complied and it turned out that November “did not suit” life on the Ruffin plantation, there “would be no such thing as getting clear of *him*, without sending *her* with him.”²²⁷ Ruffin told his wife that he believed he could find “an excuse for declining” Hooper’s request on the basis that November’s “habits” would “not at all suit the situation in which he desires to place himself—where he must work” and must “lose the opportunity of traffic & merry making.”²²⁸ “My own [wish] is to say promptly *nay*,”²²⁹ Ruffin told his wife, but he asked her for her opinion before responding to Hooper. Five days later, Ruffin’s daughter Alice responded on her mother’s behalf, saying that “whatever [Ruffin] decide[d] on the matter” would be “entirely satisfactory to her [mother],” and that her mother had “no wish on the subject” apart from her husband’s.²³⁰ The archival record does not contain Ruffin’s reply to Hooper’s request, but it seems safe to presume that Ruffin declined. He made clear in his letter to his wife that his wish was to decline unless his wife disagreed, and his financial papers reflect no purchase of a slave in 1838.²³¹ Ruffin, it appears, kept November and his wife apart.

Perhaps the most heart-wrenching of the family separations that Ruffin’s surviving papers disclose was one related to his slave-trading partnership with Benjamin Chambers. The first partnership agreement between Chambers and Ruffin recites that Chambers contributed to the enterprise “a Negro man slave called Dick about 28 years old, at the price of five hundred Dollars.”²³² At the settlement of the first partnership, Chambers “retained . . . Negro Dick and also his part of the profits,”²³³ but that same day, when Ruffin and Chambers signed their second partnership agreement, they stipulated that “Chambers is to attend to the business himself & fund his assistants, that is to say, his slave Dick & two horses & a

227. *Id.* (emphasis added).

228. *Id.*

229. *Id.* (emphasis in original).

230. Letter from Alice Ruffin to Thomas Ruffin, (July 18, 1838), Thomas Ruffin Papers, *supra* note 126.

231. It must be noted that the extant records for 1838 are considerably sketchier than those for earlier years. Those records that do exist are in the Thomas Ruffin Papers, *supra* note 126 (Box 43, Folder 669).

232. Articles of Agreement between Benjamin Chambers and Thomas Ruffin (Oct. 26, 1821), *supra* note 180.

233. Settlement Agreement (June 15, 1825), in Thomas Ruffin Papers, *supra* note 126.

carry-all or waggon out of his own means & without further compensation than by his part of the profits.”²³⁴

Benjamin Chambers thought highly of his servant Dick—so highly, in fact, that he tried to give Dick his freedom. In his will, Chambers stated that it was his “wish that my faithful servant Dick on account of his meritorious service rendered to me shall be taken by my executor to North Carolina and there set free; provided his freedom cannot be accomplished, I wish him to be sold to some good man near his family.”²³⁵ As death approached, Chambers became even more intent on reuniting Dick with his family in North Carolina. He instructed his physician, who had also prepared his will, that in the event of his death, the doctor should give Dick a pass to go to North Carolina to be near his family.²³⁶ Shortly after Chambers died on March 21, 1827, his physician wrote to Ruffin to inform him of the death. “His servant Dick is very anxious to go to North Carolina to [be] near his family,” the doctor wrote. But the doctor explained that he had thought it better not to follow Chambers’s instructions and give Dick a pass because “no such instructions [were] mentioned in the will” and he was therefore “fearful of laying [himself] liable.”²³⁷

Ruffin, whom Chambers had named executor of his will, traveled to Abbeville, South Carolina, where Chambers had died, about ten weeks later. There he renounced the office of executor and spent time trying to collect the property of the slave-trading partnership.²³⁸ Ruffin learned that Chambers had left little of value behind and that he was therefore likely to lose “two or three thousand dollars” on his investment.²³⁹ Ruffin then returned to North Carolina. He ignored Chambers’s desire that Dick should be freed and allowed to return to

234. Articles of Agreement between Benjamin Chambers and Thomas Ruffin (June 15, 1825), *supra* note 182.

235. Last Will and Testament of Benjamin Chambers, (Nov. 28, 1826), in Abbeville County Estate Papers (on file with the South Carolina Department of Archives and History). Chambers may have been from North Carolina; we know that he owned land in Hillsborough, North Carolina, *see* Letter from Benjamin Chambers to Thomas Ruffin (March 30, 1822), in Thomas Ruffin Papers, *supra* note 126, and that he referred to a trip through North Carolina as a chance to pass through his “old naborhood” [sic] and see “a few of [his] friends.” Letter from Benjamin Chambers to Thomas Ruffin (May 21, 1824), in Thomas Ruffin Papers, *supra* note 126. If Chambers was in fact from North Carolina, then it would stand to reason that Dick, his personal servant, was also from North Carolina.

236. Letter from A.B. Arnold to Thomas Ruffin (March 27, 1827), in Thomas Ruffin Papers, *supra* note 126.

237. *Id.*

238. *See* Renunciation of Office of Executor (June 18, 1827), in Abbeville County Estate Papers (on file with the South Carolina Department of Archives and History).

239. Letter from Thomas Ruffin to Anne Ruffin, *supra* note 202.

his family in North Carolina. Instead, Dick remained in Abbeville awaiting appraisal and sale.

On August 6th, appraisers examined Dick and estimated his value at \$375.²⁴⁰ That same day, Dick was offered at public auction in Abbeville, South Carolina, alongside another slave of Chambers's named Harriett, a horse, and a baggage wagon.²⁴¹ A man listed on the sale bill as J.C. Martin purchased Dick at a hammer price of \$360.²⁴²

Thanks to Thomas Ruffin, Dick was not freed and did not even make it back to North Carolina to be with his family.²⁴³

CONCLUSION

Was Thomas Ruffin a man of "honour," of "humanity," and of "the kindest and gentlest feelings" who was "obliged to interpret . . . severe laws with inflexible severity,"²⁴⁴ as Harriet Beecher Stowe saw him? Did *State v. Mann* truly open a "severe" "struggle" in Ruffin's "own breast" between his "feelings as a man" and his "duties as a Magistrate?"²⁴⁵ Did Ruffin "feel" the "harshness" of the result in *State v. Mann* "as deeply as any man can?"²⁴⁶

The full archival record—rather than the sanitized one bequeathed to scholars by Ruffin's great-grandson—provides a much clearer negative answer to all of these questions than the literature has thus far reached. Thomas Ruffin engaged in the slave trade purely as a speculator at a time when that business was uncommon among men of his station, and he continued the trade while he sat on the state court bench. Thomas Ruffin battered a slave named Bridget for giving him an insolent look. And he either sold or otherwise kept many slaves of all ages—including some even younger than age nine—away from their parents, brothers, sisters, and children. The full archival record shows that on matters relating to chattel slavery, Thomas Ruffin was certainly not among the better men of his generation and may have been among the more ruthless.

240. Appraisal, Estate of Benjamin Chambers (Aug. 6, 1827), in Abbeville County Estate Papers (on file with the South Carolina Department of Archives and History).

241. Sale Bill, Estate of Benjamin Chambers (Aug. 6, 1827), in Abbeville County Estate Papers (on file with the South Carolina Department of Archives and History).

242. *Id.*

243. I assume here that Dick's purchaser, J.C. Martin, was not a North Carolinian who traveled all the way to Abbeville, South Carolina for this particular estate sale.

244. STOWE, *THE KEY TO UNCLE TOM'S CABIN*, *supra* note 43, at 133.

245. *State v. Mann*, 13 N.C. (2 Dev.) 263, 264 (1829).

246. *Id.* at 266.

As Thomas Babington Macauley saw, the hindsight defense leaves no room for better and worse people in a generation; it insists that our ancestors lived in a “time” when “people” thought, felt, and acted in some particular way that characterized their era. The hindsight defense flattens the past and the people who lived in it, stripping prior generations of their diversity and their lives of contingency, and generalizes their colorful experiences into monotone and monolith. The rich and sobering details of Thomas Ruffin’s life as a slave owner and slave trader therefore show us just how unhelpfully generic the hindsight defense can be. The large archival record that is available to us takes us beneath the surface of the past—a surface loyally polished by Ruffin’s great-grandson. We quickly find that Ruffin lived a life of choices on slavery that were contestable even in his own time.

Worries about hindsight therefore give us little reason to refrain from judging Thomas Ruffin for his opinion in *State v. Mann*. The past may be “another country,” but a full review of Ruffin’s surviving papers shows that he chose to live in one of that country’s more backward-looking regions.